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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16
17 KENNEDY MARKETING GROUP,
INC., a California corporation,

18 Plaintiff,

19 v.

20 IDEAL DIRECT AD GROUP, INC.,
21 a California corporation; SYSTEMS
MARKETING, INC., a Kentucky
22 corporation, doing business as
AUTOSUCCESS MAGAZINE, and
23 DOES 1 through 50, inclusive,

24 Defendants.

Case No. 8:17-CV-01253-DOC-JCG

Judge David O. Carter

PERMANENT INJUNCTION [62]

25
26
27
28 MOTION

1 Having considered the stipulation of Plaintiff Kennedy Marketing Group,
2 LLC (“KMG”) and Defendant Systems Marketing, Inc. (“**Systems**”) (hereinafter
3 KMG and Systems will be jointly referred to as the “Parties”) and good cause
4 appearing, the Court hereby finds and orders as following.

5 **Findings of Fact**

6 1. The Court has subject matter jurisdiction over this action and personal
7 jurisdiction over the Parties to this action.

8 2. The Court finds from the Complaint and Stipulation of the Parties:

- 9 a. KMG owns and has registered federal copyrights and a
10 trademark and owns specified trade dress as alleged in the
11 Complaint;
- 12 b. KMG asserts that Systems infringed on the copyrights,
13 trademark and/or trade dress as alleged in the Complaint;
- 14 c. KMG asserts that a substantial likelihood of success on the
15 merits exists regarding its claims against Systems.
- 16 d. KMG asserts that it will suffer immediate and irreparable injury
17 from Systems’ alleged infringement of its copyrights,
18 trademarks and trade dress.
- 19 e. KMG asserts that its trade dress includes the combination of a
20 bi-fold and/or vertical fold brochure; with messages similar to
21 KMG’s copyrights (i.e., using copyright language such as “trade
22 keys”, “toss us the keys”, etc.) and format and order similar to
23 KMG’s works, and the use of a business card and handwritten
24 sticky note (“**KMG Trade Dress**”). KMG asserts that its trade
25 dress (1) inherently distinctive or has become distinctive
26 through secondary meaning; (2) there is a likelihood of
27 confusion among consumers as to the source of the competing
28 products; and (3) the trade dress is nonfunctional, as alleged in

the Complaint.

Conclusions of Law and Permanent Injunction

Rather than litigate the foregoing assertions, the Parties have reached a settlement pursuant to a Court ordered mediation, whereby they have stipulated that KMG is entitled to a Permanent Injunction against Systems and all persons acting as agents of or in concert with it, directly or indirectly,¹ pursuant to which the Court concludes as follows:

1. Systems is enjoined from using, disclosing and/or infringing on KMG copyrights, trademarks and Trade Dress, whether federally registered or arising at common law as alleged in the Complaint;

2. Systems is enjoined from using the advertisement at issue in this lawsuit as alleged in the Complaint;

3. Systems is enjoined from using the registered trademark depicted in federal U.S. trademark Registration No. 5,314,542 (i.e., including any confusingly similar use of a sticky note and/or of the words “see me for a great deal” in connection therewith);

4. Systems is enjoined from infringing KMG Trade Dress and shall not feature any message that is confusingly similar to any of KMG’s registered trademarks or registered copyrighted works asserted in this action (i.e., including any confusingly similar use of mailers and/or works alleged in the Complaint), including not featuring in any non-infringing mailer or work any confusingly similar business card and/or handwritten sticky note. However, Systems will not be found to infringe on KMG’s trade dress by creating mailers or works featuring: a non-bi-fold or vertical fold mailer brochure; using photo(s) of vehicle(s); using whatever quality of paper and printing; and using entirely different messages, slogans , formats or orders of text, than KMG and its proprietary works.

¹ For clarity, this Permanent Injunction does not include Defendant Babcox Media, Inc.

1 **IT IS SO ORDERED.**

2
3 Dated: September 6, 2018

David O. Carter

David O. Carter
U.S. District Judge